

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 98-204
Broadcast and Cable	)	
Equal Employment Opportunity	)	
Rules and Policies	)	

To: The Commission

**COMMENTS OF VARIOUS RADIO LICENSEES**

The Radio Licensees identified in Attachment 1 ("Radio Licensees"), by counsel, submit the following comments in response to the *Second Notice of Proposed Rule Making*<sup>1</sup> in this proceeding.

**I. STATEMENT OF INTEREST**

The Radio Licensees represented in this filing are committed to promoting diverse local service and ownership in broadcast radio. Their stations are located for the most part in very small markets. All have one thing in common: they are owned not by major media conglomerates and Fortune 500 companies, but by comparatively small – often family-owned – businesses.

These licensees firmly believe that preserving diverse local broadcast ownership and service are priorities that remain central to any sound broadcast regulatory theory. They believe that the importance of diverse local broadcast service will not diminish so long as people are

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<sup>1</sup> FCC 01-363, 16 F.C.C. Rcd. 22843 (rel. Dec. 21, 2001) ("*Second Notice*").

affected by, and seek to affect, their local communities. They believe that diversity in broadcast ownership will remain important so long as broadcasting is valued not simply in dollars but by the character of its service content.

## **II. COMMENTS**

These Radio Licensees endorse and adopt the contemporaneously-filed Comments of the Local Television Group (“LTVG”), which explain in detail why the FCC’s proposed “outreach” regulations have no adequate regulatory purpose and appear arbitrary and unlawful for other reasons as well.<sup>2</sup> Specifically, there is no basis for the Commission's assumptions that the broadcast workforce is "homogenous" and that broadcasters employ an "insular recruitment and hiring process" and each of the three "prongs" of the proposed "outreach" program appear to be arbitrary and also either beyond the FCC's statutory authority and/or unconstitutional as well.

In addition to its general support of the LTVG’s Comments opposing the reinstatement of any broadcast EEO regulations, the Radio Licensees wish to emphasize some specific concerns for local radio broadcasters in particular.

First, radio, unlike television, is not addressed in Section 334 of the Communications Act. It is, of course, arguable that that entire provision of the Communications Act has been overtaken by events – principally Court decisions – since its passage in 1992. But for reasons which are not entirely clear from the small amount of legislative history on the matter, Section

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<sup>2</sup> Like the LTVG, the Radio Licensees do not oppose the FCC’s proposal to continue its prohibition of discrimination in broadcast employment. Such discrimination is already prohibited by existing employment discrimination laws, and the Radio Licensees believe that the FCC is authorized by the Communications Act to consider violations of existing employment discrimination laws in making its broadcast licensing decisions. These comments therefore focus only on the FCC’s proposed “outreach” regulations.

334 addresses only the EEO requirements for television broadcast stations (perhaps as an analog to MVPDs) and does not mention EEO requirements for radio broadcast stations. It is inconceivable to the Radio Licensees, however, that the Commission could (or would) impose a more onerous set of EEO regulations on radio than it would on TV broadcasters. The Radio Licensees' bottom line position on this issue is that Section 334 has, indeed, become historically anachronistic and no longer provides any legislative support for reinstated EEO regulations, including by extension for such regulation of radio licensees.

Second, as a general matter, and this is certainly the case with the Radio Licensees represented in this filing, radio stations – as opposed to television stations – tend to have less financial and fewer personnel resources to support the implementation of a burdensome, paper-work heavy regime of EEO-related FCC regulation. Many of the Radio Licensees herein qualify almost literally as “mom-and-pop” operations which would find the reinstatement of “outreach” requirements and “annual employment report” filing requirements to be onerous, with no compensating public interest or public benefit purpose. Accordingly, if the LTVG’s cogent arguments against reinstating any EEO regulation should not carry the day, it is the strong suggestion of these Radio Licensees that the Commission minimize the adverse impact on smaller radio broadcasters by also reinstating, *but enlarging*, the threshold for exemption of radio stations from such regulations. It would be in order, we suggest, for that threshold to be increased from the previous “fewer than five fulltime employees” in a given employment unit to fewer than 25 fulltime employees.

Further, and in the same vein, the Commission should provide radio broadcasters in general, and smaller stations in particular, considerable leeway in implementing any reinstated “outreach” requirements. In the past, the Commission has not followed a consistent path of

enforcement concerning radio station implementation of the outreach rules – one station was fined for failure to document outreach in less than 10 out of more than 100 vacancies, while other stations which failed to document outreach for 20 out of 100 vacancies were not fined at all. If the Commission were to decide in this rulemaking that “outreach” should be required, the solution would be to establish a “safe harbor” and bright-line measure of compliance, such as 50% of vacancies for fulltime positions. Thus, a broadcaster should not be required to engage in recruitment (outreach) each and every time it engages in the hiring process, but rather the extent and scope of recruitment should be left to the good faith judgment of the broadcaster. Radio Licensees do not believe that it is necessary for the FCC to establish a quantitative standard to review the adequacy of a broadcaster’s recruitment efforts. However, if the FCC insists that such a quantitative standard is necessary, we believe that the FCC should establish a benchmark indicating that if a broadcaster recruits for at least 50% of its job openings, this constitutes a safe harbor. The FCC rules should state that it will review the recruitment efforts of a broadcaster, if at all, only if it falls below this 50% level.

The following are other specific suggestions for how the FCC might make the proposed rules less burdensome and more tolerable for radio broadcasters:

- Specify that it is sufficient if broadcasters provide notice of job openings by at least one means available to the general public, such as an Internet-posting or a publication in a newspaper of general circulation in the community. That is all that is even arguably necessary to achieve the FCC’s stated objective of “fairness” to “all potential job applicants.”
- Specify that no required recruitment “outreach” need be used in connection with any hire involving a two percent or greater equity owner of the company, or a member of such an owner’s immediate family (spouse, parent, grandparent, child, or grandchild). This will permit broadcasters to hire

family members in a family-owned business, and to otherwise engage in perfectly normal and “fair” employment practices that are inconsistent with the FCC’s proposed “outreach” requirements.

- Specify that radio stations with fewer than 25 employees will not be subject to the proposed “outreach” rules or any associated EEO record keeping and filing requirements. This will exempt small businesses from the burdens and costs entailed by the proposed rules. Such small businesses clearly deserve such an exemption, particularly if the rules are adopted in anything like their current proposed elaborate and highly burdensome form.
- Specify that, for larger businesses that are required to file EEOC Form EEO-1, no largely duplicative FCC Form 395-B filing will be required. To require two largely duplicative federal regulatory filings is a paradigmatic example of an undue federal regulatory burden, and it is no justification for such a duplication of burden and expense to maintain that an agency needs to “report to Congress” its own unique set of data, when that data is distinguished only by what amounts to the agency’s own idiosyncratic statistical preferences.
- Specify that no filing of data which reflects the race, gender or ethnicity of employees, job applicants or hires will be required, unless such a filing is completely anonymous in nature. This is necessary (although possibly not sufficient) to ensure that such a filing requirement, and all “outreach” or other EEO rules to which it may expressly or implicitly relate, remain consistent with the Constitution. (Under the FCC’s prior rules, the FCC created the impression that such filings would not be “public” and then it posted them on its Web site. This sort of action must not be repeated.)
- Decline to adopt the proposed requirement that broadcasters post their annual EEO public file reports on their Web sites. This requirement is unduly burdensome, and it is also probably unconstitutional under the First Amendment.

- Decline to adopt the so-called “Prong 2” requirement – the requirement that notice of job openings be provided to all groups which request such notice – in its entirety. That requirement is clearly overbroad and arbitrary as currently formulated, and there is no way to narrow it that would be consistent with both the FCC’s statutory authority and the Constitution.
- Decline to adopt the so-called “Prong 3” requirement – the requirement that broadcasters perform certain of the “menu options” – in its entirety. Every constituent element of that requirement is well beyond the FCC’s statutory authority and is also almost certainly unconstitutional.

### **III. CONCLUSION**

For the foregoing reasons, the Radio Licensees urge that the FCC decline to adopt the proposed “outreach” rules in their entirety. If any such rules are adopted, they should reflect each of the proposed modifications itemized immediately above.

Respectfully submitted

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identified in Attachment 1

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**ATTACHMENT 1****RADIO LICENSEES**

<b><u>Licensee</u></b>	<b><u>Station</u></b>	<b><u>City of License</u></b>
910 Broadcasting Corp.	KXEB(AM)	Sherman, TX
Amigo Broadcasting L.P.	KLHB(FM) KXXS(FM) KGRW(FM) KQFX(FM) KNEX(FM) KLNT(AM) KLTG(FM) KMJR(FM) KOUL(FM)	Odem, TX Marble Falls, TX Friona, TX Borger, TX Laredo, TX Laredo, TX Corpus Christi, TX Portland, TX Sinton, TX
The Berkshire Broadcasting Corporation	WLAD(AM) WDAQ(FM) WREF(AM)	Danbury, CT Danbury, CT Ridgefield, CT
Holy Spirit Radio Foundation, Inc. (noncommercial AM station)	WISP(AM)	Doylestown, PA
Kansas Capital Broadcasting Inc.	KTPK-FM	Topeka, KS
Mariner Broadcasting Limited Partnership	WBQQ WQEZ WBQW WBQX WBQI	Kennebunk, ME Kennebunkport, ME Scarborough, ME Thomaston, ME Bar Harbor, ME
New Media Broadcasters, Inc.	KOJM (AM) KPQX-FM KRYK-FM	Havre, MT Havre, MT Chinook, MT
Pecos Valley Broadcasting Co.	KSVP KTZA	Artesia, NM Artesia, NM
RAK Communications, Inc.	KXEX(AM) KQEQ(AM)	Fresno, CA Fowler, CA

R & R Radio Corporation	KPSI-FM KDES-FM KGAM(AM) KPSI(AM)	Palm Springs, CA Palm Springs, CA Palm Springs, CA Palm Springs, CA
San Joaquin Broadcasting Co.	KSTN KSTN-FM	Stockton, CA Stockton, CA
Southwest Broadcasting Company, Inc.	KYCA(AM) KAHM(FM)	Prescott, AZ Prescott, AZ
Southwest Ohio Broadcast Service General Partnership	WSWO(FM) WKFI(AM)	Wilmington, OH Wilmington, OH
Tsunami Radio, LP	KBIS(AM)	Highland Park, TX
Washington Broadcasting Company	WJPA(AM) WJPA-FM	Washington, PA Washington, PA
WAYN, Inc.	WAYN(AM)	Rockingham, NC